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09/885,829	06/20/2001	Kanji Minato	F-7029	4384

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EXAMINER

VALENTI, ANDREA M

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 07/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/885,829

Applicant(s)

MINATO ET AL.

Examiner

Andrea M. Valenti

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

The Final Rejection of claims 1-14 in paper no. 9 is withdrawn in view of the newly discovered reference(s) to U.S. Patent No. 4,798,723 and Soviet Union Patent SU1793878 to Dzhalilov et al. Rejections based on the newly cited reference(s) follow.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Soviet Union Patent SU1793878 to Dzhalilov et al.

Regarding Claim 1, 8, and 14, Dzhalilov et al teaches a method of controlling a seed disease by sterilizing seeds by at least one of a physical technique and by an effective microorganism which is antagonistic against a pathogen of a seed borne disease (Dzhalilov et al English abstract).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Control of Phytopathogenic Prokaryotes By Cultural Management and Chemicals in view of Soviet Union Patent SU1793878 to Dzhililov et al.

Regarding Claim 1, 2, 5, and 14, the article on Cultural Management teaches a method of controlling a seed disease by sterilizing seeds by at least one of a physical technique (Page 1 Section C, Seed Treatment and Table 2) and a chemical technique (Page 9, Section C, Seed Treatment); and by an effective microorganism which is antagonistic against a pathogen of a seed borne disease (Page 12 Section 6). Cultural Management is silent on the order in which the steps are conducted. However, Dzhililov et al teaches a method of treating a seed by first physically treating the seed (i.e. pre-soaking in warm water) and then treating it with a microorganism. It would have been obvious to one of ordinary skill in the art to apply the method steps of Dzhililov et al to the teachings of Cultural Management as a comprehensive and effective means of seed treatment for enhanced success.

Regarding Claim 6, the article on Cultural Management as modified discloses that the seeds to be treated are those, which have been contaminated with the pathogen of the seed born disease (Table 2).

Regarding Claim 7, the article on Cultural Management as modified discloses the treated seeds are those belonging to a family selected from the group Brassicaceae, Umbelliferae, Solanaceae, Cucurbitaceae, Compositae, Liliaceae, Chenopodiaceae, Leguminosae (Page 12 Section 6).

Regarding Claim 8, the article on Cultural Management as modified discloses the physical technique is a dry-heating treatment or warm-water treatment (Table 2).

Regarding Claim 9, the article on Cultural Management as modified discloses the chemical technique is a treatment selected from the group of soaking, powder-coating, and coating wherein all three treatments are performed using a synthetic agrochemical (Page 9 Section C, Seed Treatment).

Regarding Claims 3 and 4, the article on Cultural Management as modified teaches the use of Streptomycin as an antagonist for Xanthomonas, but is silent on genus Pantoea or genus Lecleria. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of the article on Cultural Management since the modification is merely an application of an alternate equivalent bacterium selected for its improved prokaryotic protein synthesis.

Claims 10-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Control of Phytopathogenic Prokaryotes By Cultural Management and Chemicals as applied to claim 1 above, and further in view of U.S. Patent No.4,798,723 to Dart et al.

Regarding Claims 10-13, the article on the Cultural Management as modified teaches spraying, but is silent on other administering techniques for the treatment by an effective microorganism. However, Dart et al teaches that the microorganism treatment applied to a seed through soaking in an aqueous dispersion of the effective microorganism, pelleting, film coating, water absorbing (Dart et al Col. 13 lines 1-60) . It would have been obvious to one of ordinary skill in the art to modify the teachings of the

article on Cultural Management with the old and well-known microorganism applications of Dart to optimize the seed treatment with a thorough and efficient application.

***Response to Arguments***


Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

Examiner maintains that applicant's broad claim language does not distinguish over the teachings of the prior art. Examiner maintains that the antibiotics taught by Cultural Management teach that the antibiotic microbes are antagonists for other microbes and are in fact an effective microorganism.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4195 for regular communications and 703-305-0285 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV

  
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